U.S. Department of Labor

Board of Alien Labor Certification Appeals
1111 20th Street, N.W.
Washington, D.C. 20036

DATE: December 19, 1988
CASE NO. 87-INA-717

IN THE MATTER OF

KEITHLEY INSTRUMENTS, INC.,
Employer

on behalf of

DIOGENES EMILIO NARANJO,
Alien

Richard P. Goddard, Esq.
Thomas R. Coerdt, Esq.
Cleveland, OH
For the Employer

BEFORE: Litt, Chief Judge, Vittone, Deputy Chief Judge,
and Brenner, DeGregorio, Tureck, Guill and Schoenfeld
Administrative Law Judges

JEFFREY TURECK
Administrative Law Judge

DECISION AND ORDER

This application was submitted by the Employer on behalf of the above-named Alien pursuant to Section 212(a)(14) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(14) (hereinafter "the Act"). The Employer requested review from U.S. Department of Labor Certifying Officer Wellington C. Howard's denial of a labor certification application pursuant to 20 C.F.R. Section 656.26.[1]

Under Section 212(a)(14) of the Act, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is ineligible to receive a visa unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that: (1) there are not sufficient workers in the United States who are able, willing, qualified, and available at the time of application for a visa and admission into the United States and at the place

[1] All of the regulations cited in this decision are contained in Title 20 of the Code of Federal Regulations.

where the alien is to perform the work; and (2) the employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

An employer who desires to employ an alien on a permanent basis must demonstrate that the requirements of Part 656 of the regulations have been met. These requirements include the responsibility of the employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other reasonable means, in order to make a good faith test of U.S. worker availability.

This review of the denial of a labor certification is based on the record upon which the denial was made, together with the request for review, as contained in an Appeal File ("AF"), and any written arguments of the parties [see §656.27(c)].

Statement of the Case

On December 24, 1985, the Employer, a manufacturer and tester of data acquisition and control instruments, filed an application for alien employment certification (AF 119-22) to enable the Alien to fill the position of Design Engineer. A B.S. in Electronic Technology was required, with one year of experience in electronics engineering. The Employer listed, as a special requirement, that the one year of experience as an electronics engineer include one year of experience as an application engineer in customer contact with data acquisition and control products.[2]

Following the issuance of the Notice of Findings ("NOF") by the Certifying Officer ("CO") on December 8, 1986 (AF 114-16) and the Employer's filing of its rebuttal on January 8, 1987 (AF 108-13), a Final Determination denying certification was issued on January 21, 1987 (AF 108-13). Employer then sought administrative-judicial review. On May 26, 1987 (AF 34b-36b), Administrative Law Judge Aaron Silverman remanded the case to the CO, noting, inter alia, "that the Alien may not have had one year of experience as an electronics engineer, as the application indicates he had been employed as an application engineer." (AF 36b). In response to the order of remand, the CO issued another NOF on June 15, 1987 (AF 31b-33b), which was followed by a rebuttal from Employer on July 27, 1987 (AF 19b-30b). The CO again denied certification, on July 28, 1987 (AF 16b-18b).

In the most recent NOF (AF 31b-33b), the Certifying Officer found, inter alia, that the Alien is not qualified for the job, as he does not appear to possess one year of experience as an electronics engineer. The Certifying Officer noted that the Alien indicated that he had previously been employed as an application engineer, not as an electronics engineer (see AF 121-22).

Employer maintained in its rebuttal (AF 19b-30b) that the job requirements for the

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[2] It appears that Employer is requiring one year of experience in two different positions in only one year. That this experience requirement is confusing does not effect the outcome of this case.

position represent its actual minimum job requirements. Employer argued that the position utilizes a comprehensive set of skills and, as a result, the requirement of one year of engineering experience must include one year of experience in application engineering. Employer further asserted that it had not hired workers with less training or experience. Moreover, Employer stated that it did not train the Alien for the position. It pointed out that because the Alien was previously employed by the company in the capacity of application engineer, he was able to acquire experience in technical writing and customer contact relating to data acquisition equipment.

Finally, citing the Alien's degree in electrical technology, his ability to develop and describe state-of-the-art software and hardware systems, and his existing relationship with customers, Employer pointed out that the Alien is amply qualified for the position.

In the Final Determination (AF 16b-18b), in addition to finding several violations of law not discussed above, the Certifying Officer denied certification because the Alien does not appear to meet the one year experience requirement in electronics engineering.

We agree with the CO that the Alien does not meet Employer's stated job requirements. The position specifically requires one year of experience in electronics engineering, which is to include equal experience in application engineering (AF 119). The Alien has one year of experience as an application engineer, but has no experience in electronics engineering (see AF 121-22). Employer has not responded to this point, which has been an issue in this case since Judge Silverman's decision. Accordingly, Employer's argument (AF 27b-28b) that the Alien is qualified to perform the job is rejected as unsupported by the record.

Since U.S. workers were required to meet standards that the Alien does not meet, certification cannot be granted, in accordance with §656.21(b)(6).

ORDER

The Certifying Officer's denial of certification is affirmed.

For the Board

JEFFREY TURECK
Administrative Law Judge